

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1220 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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STATE OF GUJARAT

Versus

J N CHOPRA

Appearance:

MS HARSHA DEVANI, ld.AGP for appellant

MR MC BHATT for Respondent

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 21/07/2000

ORAL JUDGEMENT

This is defendant's appeal against the judgment and decree dated 26th June 1980 passed by the City Civil Court, at Ahmedabad in Civil Suit No.190 of 1977 whereby the suit was decreed.

2. The plaintiff filed the suit for declaration that the order dated 19th October 1976 which had been passed by the Deputy Collector of Ahmedabad was illegal, contrary to law, void and inoperative and therefore a permanent injunction was sought against the defendant State.

3. Out of Final Plot No.7 of Town Planning Scheme No.15 of Vadaj at Ahmedabad, 1080 sq.yards of land was

allotted to the respondent herein on 22nd August 1973 and 339 sq.yards of land was allotted to him on 1.11.1973. Later on, i.e. on 19th October 1976, the City Deputy Collector issued a notice under Section 202 of the Bombay Land Revenue Code to the respondent herein to remove the encroachment made by him on the land of 691 sq.yards in the same Final Plot No.15. Against this notice/order dated 19th October 1976, the respondent herein had filed the present suit. In the said suit, the following three Issues were framed by the trial Court:

- (1) Does the plaintiff prove that the suit order dated 19th October 1976 is illegal and invalid?
- (2) What relief or reliefs, if any, is the plaintiff entitled to claim in this suit?
- (3) What final order and decree?

4. The trial Court held that Gujarat Public Premises (Eviction of Unauthorised Occupants) Act had the effect of repealing all other corresponding laws including Section 202 of the Bombay Land Revenue Code and on that basis, the suit was decreed. Learned AGP Ms.Harsha Devani for the appellant has submitted that this view is wrong as the Bombay Land Revenue Code is a special law and the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act could not repeal the Bombay Land Revenue Code. In support of her submission, she has placed reliance on the case of State v. Sarabhai Mafatbhai, reported in 23 (2) GLR 596. Even otherwise, it is very clear that the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act is a law in aid of the existing laws and it could not repeal the Bombay Land Revenue Code which was certainly a special enactment. The view taken by the trial Court is contrary to the law laid down by this Court in the aforesaid decision and the impugned judgment and decree deserves to be set aside on this ground alone.

5. Learned Counsel Mr.Bhatt for the respondent has submitted that because the suit was decreed on this preliminary point, the other contentions regarding the illegality, correctness and propriety of the notice/order dated 19th October 1976 were not gone into by the trial Court and therefore, the matter deserves to be remanded for consideration in accordance with law. The contention raised by Mr.Bhatt is not without force and the matter deserves to be remanded.

6. Accordingly, this appeal deserves to be partly allowed. The impugned judgment and decree dated 26th June 1980 passed by the City Civil Court, at Ahmedabad in Civil Suit No.190 of 1977 is hereby set aside. The matter is remanded to the trial Court for trial afresh in accordance with law in the light of this order. The appeal is partly allowed as above. No order as to costs.

(M.R. Calla, J.)